IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12156 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

R.B.BURMAN
Versus
DIRECTOR GENERAL & IGP

==========

Appearance :
MR IS SUPEHIA for Petitioner.
MS TRUSHA PATEL, AGP for Respondents.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 05/12/2006

ORAL JUDGMENT

By filing this petition, the petitioner has prayed that appropriate writ or direction may be issued directing the authority to correct his birth date.

When the petitioner joined the service, his date of birth was

recorded as 1-3-1949, but after some time, when work of house repair was carried out at his residence, the petitioner found birth certificate issued by the Ahmedabad Municipal Corporation, which shows that the petitioner was actually born on 6-10-1950. In view of that he had applied to the authority by his application dated 6-6-1991, which is at page 10 in the compilation, and requested to correct his birth date from 1-3-1949 to 6-10-1950. By letter dated 5-9-1991, the petitioner was informed that his prayer for correction in birth date is not accepted. Thereafter, the petitioner carried the matter further with Principal Secretary, Home Department vide his letter dated 21-1-992 giving particulars about his birth date. By letter dated 8-10-1993, the petitioner was informed that in view of the provisions of Bombay Civil Services Rules ("BCSR" for short), more particularly, Rule 171 which provides that for correction in birth date, a Government servant is required apply within five years from the date of joining service, and since the petitioner has not applied within the said period, his prayer cannot be accepted. Being aggrieved by said order, the petitioner has approached this Court by filing present petition.

Mr.Supehia, learned advocate for the petitioner submitted that the time limit prescribed under Rule 171 of BCSR came into existence in 1992, while the petitioner was appointed prior to that period and, therefore, said rule cannot be made applicable retrospectively in the case of the petitioner. It is also submitted by him that the petitioner approached the authority about 16 to 17 years before his retirement age, because even as per the incorrect birth date, the petitioner is to retire in 2007 and it cannot be said that the petitioner has approached the authority on the eve of his retirement.

Mr.Supehia also submitted that the petitioner is is serving as a

'peon' and if his date of birth is corrected, his juniors are not likely to be affected as nobody is going to be promoted on the post of 'peon'. Mr.Supehia has also made faint attempt to point out that since this is a clerical mistake, the authority was required to correct the birth date of the petitioner.

On the other hand, learned AGP, Ms.Trusha Patel submitted that the petitioner has approached the authority for correction of his birth date, after at least 17 years from the date of joining the service. She also submitted that in view of the latest judgement of the Supreme Court in the case of **State of Gujarat & Ors., Vs. Vali Mohmed Dosabhai Sindhi**, delivered in Civil Appeal No.3043/2006, the claim of the petitioner now cannot be considered as he has applied after about 17 years from the date of his appointment for correcting his birth date.

I have heard both the learned advocates at length. The following aspects are not in dispute.

(i) After his initial appointment, the petitioner approached the authority after about 17 years for correcting his date of birth.

(ii) In the year 1982, the Government laid down a policy that if any Government Servant wants to apply for correcting his birth date, he/she should apply within five years from the date of his appointment. In the instant case, it is no doubt true that the petitioner was appointed prior to 1982, but he has not applied within five years for correction in his birth date, and even after the introduction of the aforesaid rule, the petitioner has applied for correction in birth date after more than nine years.

(iii) In the aforesaid judgement, the Supreme Court has held that the Government Servant should apply within a reasonable time for correcting his date of birth, however, in the instant case, it can never be presumed that the petitioner has applied to the authority within reasonable time, as the petitioner has applied for correction in birth date after about 17 years from the date of his appointment. Simply because the petitioner might have found out some evidence at a later point of time, is no ground for asking the authority to consider his case even at such a belated stage.

It is true that this is not a case in which the petitioner has approached the authority for correction in his birth date on the eve of his retirement, but it is not in dispute that the petitioner has approached the authority after about 17 years from the date of his appointment and in view of aforesaid judgement, Government servant is required to approach the authority within a reasonable time with appropriate material which is required to be taken into consideration by the authority for correcting the birth date. Not only that even after the introduction of Rule 171, the petitioner has not applied within a period of five years for correcting his birth date.

Mr.Supehia submitted that the petitioner is serving as a 'peon' and, therefore, if he is continued in service by correcting his birth date, it may not affect rights of anyone for getting promotion, as there is no channel for promotion from which a person can be promoted as a 'peon'. However, in my view, when the petitioner has not approached the authority within reasonable time, the aspect that his continuation as a 'peon' may not affect anyone's right is besides the point. Mr.Supehia also submitted that this is a clerical mistake and the authority should have corrected the same. It is not possible to agree with said argument of

Mr.Supehia as it cannot be said that it is merely a clerical mistake because the authority has recorded the date of birth of the petitioner as per the evidence produced by the petitioner at the time of entering in service.

In view of above, in my view, the authority is justified in not correcting the birth date of the petitioner on the ground of delay, as he has not applied to the authority within five years from the date of his appointment nor he has applied within five years from the date of introduction of the aforesaid rule, therefore, no fault can be found with the decision of the authority. Hence, this petition is dismissed. Rule is discharged with no order as to costs.

(P.B.Majmudar, J.)

/malek